



Date: January 15, 2009
To: City Manager for Council Action
From: John C. Roukema, Director of Electric Utility
Subject: Approval of Amendment No. 1 to an Agreement with Santa Clara Unified School District to Extend a Fiber Lease for Six Months

EXECUTIVE SUMMARY:

In 1995, Council approved the construction of a backbone fiber optics network for the Electric Department and for General Government communication needs that included added capacity for the leasing of fiber and the provision of other services to third parties. On July 18, 2006, Council approved a 2-year Irrevocable Right to Use (IRU) fiber optic lease with the Santa Clara Unified School District (SCUSD) to benefit the newly constructed Don Callejon School. The intent was to eventually integrate to an overall telecommunications (telecom) plan to provide voice, video, and data into all the District schools. The SCUSD fiber lease contributed \$27,500 toward the extension of the City's fiber system.

At the end of two years the SCUSD telecom plan was not completed, and in accordance with the existing fiber lease agreement, the District amended the lease via written notice, extending the term to January 18, 2009, and prepaying \$6,544.89. While construction for the schoolwide telecom plan is underway, SCUSD has requested a more flexible term to assure them of business continuity until it is completed. Amendment No. 1 retroactively amends and extends the District's fiber lease agreement to July 18, 2009, and provides the District the option of renewing the lease every six (6) months. A copy of Amendment No. 1 to the Agreement with the Santa Clara Unified School District is available for review in the Council Office.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

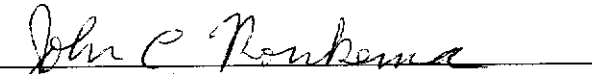
Amendment No. 1 to the SCUSD fiber lease allows Silicon Valley Power (SVP) to continue to maintain fiber for communication requirements necessary for reliable system operation while producing revenue. The amendment expands the SVP Fiber Enterprise leasing services, provides opportunity to feed more City-owned assets, provides for future infra-structure needs, and enables the City to provide support to the non-profit school system. The lease construction and operational requirements will be met by existing personnel and contracted services.

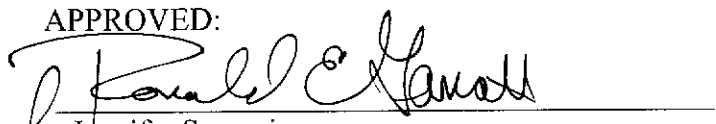
ECONOMIC/FISCAL IMPACT:

Amendment No. 1 will contribute \$6,544.89 during the initial term of the amendment. No additional allocation of funds is required to execute the District lease.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, Amendment No. 1 to an Agreement with the Santa Clara Unified School District to extend the Fiber Lease for six months.


John C. Roukema
Director of Electric Utility

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:

- 1) *Amendment No. 1 to the (Fiber Lease) Agreement with Santa Clara Unified School District*

**AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND**

SANTA CLARA UNIFIED SCHOOL DISTRICT

This agreement ("Amendment No.1") is made and entered into on this ____ day of _____, 2009, ("Effective Date") by and between the City of Santa Clara, California, a chartered California municipal corporation, Silicon Valley Power (the "City"), and Santa Clara Unified School District ("Lessee"), with an office at 1889 Lawrence Road, Santa Clara, California, 95051. The City and Lessee may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

RECITALS

- A. The Parties previously entered into an agreement entitled "Lease Agreement by and between the City of Santa Clara, California, and the Lessee dated July 18, 2006, (the "Original Agreement"); and
- B. On August 1, 2008, the Original Agreement was retroactively renewed by letter agreement for six months through January 18, 2009. The Original Agreement and all previous amendments are collectively referred to herein as the "Original Agreement as Amended"; and
- C. The Parties entered into the Original Agreement as Amended for the purpose of executing a dark fiber lease agreement between the City of Santa Clara and the Lessee.
- D. The Parties now wish to amend the Original Agreement to: (i) replace in its entirety Article 2. Term, and (ii) retroactively renew the Original Agreement through July 18, 2009.

In consideration of the above Recitals and the following mutual covenants and obligations, the Parties agree as follows:

AGREEMENT PROVISIONS

1. That Article 2. ("Term") of the Original Agreement as Amended, entitled "Amendment No. 1 to the Lease Agreement by and between the City of Santa Clara, California, and Lessee is hereby amended to read as follows:

ARTICLE 2. TERM

- 2.1 **Effective Date of Agreement.** This Agreement shall be binding on the Parties beginning on the Effective Date.
- 2.2 **Term of Lease.** The Term of this Lease is the Initial Term plus the exercised Renewal Term. The Initial Term is defined in Exhibit 5.
- 2.3 **Renewal Terms.** Provided Lessee is not in default of any of the material terms or provisions of this Lease (including but not limited to payment of all fees and charges) beyond the applicable cure period, Lessee may renew this Lease every six-months. The manner in which to set price for a Renewal Term is set forth in Article 3, "Lease Payment and Other Fees". To request a Renewal Term, Lessee shall:
- 2.3.1 Deliver to the Director, a written request to extend the Term as early as sixty (60) calendar days, and no later than thirty (30) calendar days, prior to the expiration of the then effective term, Initial, Renewal or otherwise. (Time-is-of-the-essence may be invoked by the City with respect to this notification period.)
- 2.3.2 Any request to modify or disconnect fiber shall be defined using a Work Order Request Form as defined in Exhibit 10, as attached.

(continued on page 3 of 3)

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2. All other terms of the Original Agreement as Amended which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement, the provisions of this Amendment No. 1 shall control

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

HELENE LEICHTER
City Attorney

JENNIFER SPARACINO
City Manager

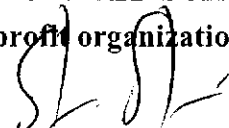
ATTEST:

ROD DIRIDON, JR.
City Clerk

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

"City"

SANTA CLARA UNIFIED SCHOOL DISTRICT
A non-profit organization

By: 
STEVE STAVIS
Title: Superintendent
Address: 1889 Lawrence Road
Santa Clara, CA 95051
Telephone: (408) 423-2005
Facsimile: (408) 423-3088

"Lessee"

**WORK ORDER REQUEST FORM
SANTA CLARA UNIFIED SCHOOL DISTRICT
REQUEST FORM**

[FOR WORK TO BE PERFORMED BY CITY]

This Request Form is submitted on behalf of **Santa Clara Unified School District**, the lessee (the "Lessee") under that certain Lease Agreement by and between the City of Santa Clara, California (the "City") and Lessee dated as of July 18, 2006 (the "Agreement"). Lessee hereby requests that the City provide Additional Attachment Points, Fibers, Service Drops, or Backbone Extensions, as indicated below. The person signing on behalf of Lessee has authority to bind Lessee. Provided that this Request Form is signed on behalf of the City and returned to Lessee on or before _____, then this document shall amend the Agreement as herein provided without the necessity of any further action by either party. If this document is not signed on behalf of the City and returned to Lessee by the date referenced in the preceding sentence, then this Request Form shall be null and void unless an extension is granted in writing by Lessee.

Attachment Points

Lessee requests that the City provide Lessee with Attachment Points at the following locations:

<u>Intersection Description</u>	<u>Box Number</u>	<u>No. of Fibers To attach</u>	<u>Est. Cost</u>	<u>Est. Completion</u>
1.				
2.				
3.				

Lessee hereby requests that it be permitted to lease Additional Leaseable Fiber at the following locations:

<u>No. of Fibers</u>	<u>General Intersection</u>	<u>Node to Node</u>	<u>Price Per Exhibit 5</u>	<u>Est. Completion</u>
	<u>Location</u>			
1.				
2.				
3.				

Service Drops

Lessee requests that the City construct a Service Drop for Lessee at the following locations:

<u>Intersection Description</u>	<u>Box Number</u>	<u>No. of Fibers</u>	<u>Est. Cost</u>	<u>Est. Completion</u>
1.				
2.				
3.				

Backbone Extensions

Lessee requests that City consider extending its backbone and lease portions of that extension to Lessee, in the following locations:

Describe the general path by Street name and intersections. State the number of fibers Lessee will lease.

Lateral Extensions

Lessee requests that the City construct a Lateral Extension at the following locations:

<u>Street Address</u>	<u>Tenant Name</u>	<u>No. of Fibers</u>	<u>Est. Cost</u>	<u>Est. Completion</u>
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|----|--|--|--|--|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

Building Entrance

Lessee requests that the City obtain Building Entrance at the following locations:

<u>Street Address</u>	<u>Tenant Name</u>	<u>No. of Fibers</u>	<u>Est. Cost</u>	<u>Est. Completion</u>
		<u>to Enter</u>		

- | | | | | |
|----|--|--|--|--|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

ADDITIONAL FIBER LEASE AND ENGINEERING SERVICES**Work Orders Request Form**

Exhibit 10 Work Order Request Forms shall be valid to the end of the request form term date or until the end of the Agreement, whichever is shorter.

- Existing Fiber and Additional Fiber Requests. Work orders commence on fiber lease and shall be valid to the Request End Date or until the end of the Original Agreement, whichever is shorter.
- Advanced Notice Required. Fiber lease fees are prepaid. In order to bill in accordance with Lease Agreement, Article 3, SVP must receive advance notice of one quarter to extend a short-term lease order.

- **Disconnection Fee.** In addition, Lessee shall pay, at cost, a disconnection fee subject to engineering examination of fiber location, engineering fees, cost to access a box, disconnect and resplice, and final test, and disconnect fees.

By their signatures below, Lessee and the City agree that the Agreement is amended as per the terms set forth above, effective as of the date this Request Form is signed by the City (subject to the time limitation set forth above). City will use its commercially reasonable efforts to meet the

estimated completion dates above, however, Lessee understands and agrees that the estimated completion dates are estimated dates, and not guaranteed by City

Santa Clara Unified School District
a non-profit corporation

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

By: _____
Title: _____

Address: 1889 Lawrence Road
Santa Clara, CA 95051
Telephone: () -
Fax: () -

Dated: _____

"Lessee"

By: John C. Roukema
Director, Electric Utility

1500 Warburton Avenue
Santa Clara, California 95050
Telephone: (408) 261-5292
Fax: (408) 249-0217

Dated: _____

"City"

IF COUNCIL APPROVAL IS NECESSARY, THE FOLLOWING SIGNATURES MUST BE OBTAINED IN ORDER FOR THIS TO BE A VALID AND BINDING AMENDMENT TO THE AGREEMENT:

Approved as to form:

HELENE L. LEICHTER
City Attorney

Attest: Santa Clara, CA 95050

ROD DIRIDON, JR.
City Clerk

By: _____
JENNIFER SPARACINO
City Manager

1500 Warburton Avenue

Telephone: (408) 615-2210
Fax: (408) 241-6771

CITY OF SANTA CLARA
AGENDA MATERIAL ROUTE SHEET

Council Date January 27, 2009

SUBJECT: Approval of Amendment No. 1 to the Fiber Lease Agreement with Santa Clara Unified School District to Extend the Term for Six Months

CERTIFICATION

The proposed Amendment No. 1 to the Agreement with Santa Clara Unified School District
Regarding: Extending the Term of the Fiber Lease for Six Months
has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published ____ time(s) at least ____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 2008.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title _____ U.S.C. § _____
(Titles run 1 through 50)

California Codes:

Code _____ § _____
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

Title _____ C.F.R. § _____
(Titles run 1 through 50)

California Regulations:

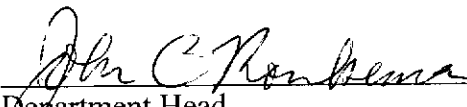
Title _____ California Code of Regulations § _____
(Titles run 1 through 28)

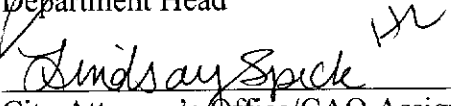
City

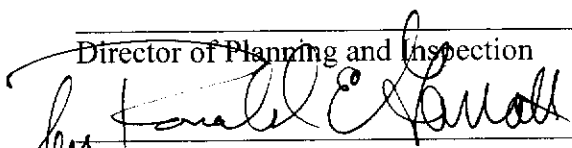
City Charter § _____ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)

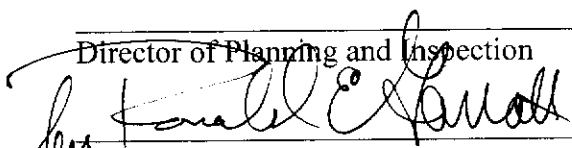
City Code § _____

1. As to City Functions, by
2. As to Legality, by
3. As to Environmental Impact Requirements, by
4. As to Substance, by


Department Head


City Attorney's Office/CAO Assignment No. 08.1738


Director of Planning and Inspection


City Manager

Revision Date: June 7, 2005